

uncertainties known to the general partner that relate to the conclusions in any such report, opinion or appraisal including, but not limited to, developments or trends that have affected or are reasonably likely to affect materially such conclusions.

Instructions to Item 910: (1) A statement that the general partner has no reasonable belief as to the fairness of the roll-up transaction to investors will not be considered sufficient disclosure in response to paragraph (a) of this Item (§ 229.910(a)).

(2) The factors which are important in determining the fairness of a roll-up transaction to investors and the weight, if any, which should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraph (b)(1) of Item 909 (§ 229.909(b)(1)) and whether the consideration offered to investors constitutes fair value in relation to:

- (i) Current market prices, if any;
 - (ii) Historic market prices, if any;
 - (iii) Net book value;
 - (iv) Going concern value;
 - (v) Liquidation value;
 - (vi) Purchases of limited partnership interests by the general partner or sponsor or their affiliates since the commencement of the partnership's second full fiscal year preceding the date of filing of the disclosure document for the roll-up transaction;
 - (vii) Any report, opinion, or appraisal described in Item 911 of this subpart (§ 229.911); and
 - (viii) Offers of which the general partner or sponsor is aware made during the preceding eighteen months for a merger, consolidation, or combination of any of the partnerships; an acquisition of any of the partnerships or a material amount of their assets; a tender offer for or other acquisition of securities of any class issued by any of the partnerships; or a change in control of any of the partnerships.
- (3) The discussion concerning fairness should specifically address material terms of the transaction including whether the consideration offered to investors constitutes fair value in relation to:
- (i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction;
 - (ii) The methods used to determine such consideration; and
 - (iii) The compensation to be paid to the sponsor in the future.
- (4) Conclusory statements, such as "The roll-up transaction is fair to investors in relation to net book value, going concern value, liquidation value and future prospects of the partnership," will not be considered

sufficient disclosure in response to paragraph (b) of this Item (§ 229.910(b)).

(5) Consideration should be given to presenting the comparative numerical data as to the value of the consideration being received by investors, liquidation value and other values in a tabular format. Financial and other information concerning the partnerships should be prepared based upon the most recent available information, such as, in the case of financial information, the periods covered by interim selected financial information included in the prospectus in accordance with Item 914 of this subpart (§ 229.914).

§ 229.911 (Item 911) Reports, opinions and appraisals.

(a)(1) *All material reports, opinions or appraisals.* State whether or not the general partner or sponsor has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party which is materially related to the roll-up transaction including, but not limited to, any such report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to investors in connection with the roll-up transaction or the fairness of such transaction to the general partner or investors.

(2) With respect to any report, opinion or appraisal described in paragraph (a)(1) of this Item (§ 229.911);

- (i) Identify such outside party;
- (ii) Briefly describe the qualifications of such outside party;
- (iii) Describe the method of selection of such outside party;
- (iv) Describe any material relationship between:
 - (A) The outside party or its affiliates; and
 - (B) The general partner, sponsor, the successor or any of their affiliates,

which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(v) If such report, opinion or appraisal relates to the fairness of the consideration, state whether the general partner, sponsor or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid.

(vi) Furnish a summary concerning such report, opinion or appraisal which shall include, but not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the general partner, sponsor or its affiliates; and any limitation imposed by the general partner, sponsor or affiliate on the scope of the investigation. If any limitation was imposed by the general partner, sponsor or affiliate on the scope of the investigation, including, but not limited to, access to its personnel, premises, and relevant books and records, state the reasons therefor.

(vii) State whether any compensation paid to such outside party is contingent on the approval or completion of the roll-up transaction and, if so, the reasons for compensating such parties on a contingent basis.

(3) Furnish a statement to the effect that upon written request by an investor or his representative who has been so designated in writing, a copy of any such report, opinion or appraisal shall be transmitted promptly, without charge, by the general partner or sponsor. The statement also must include the name and address of the person to whom investors or their representatives should make their request.

(4) All reports, opinions or appraisals referred to in paragraph (a)(1) of this Item (§ 229.911) shall be filed as exhibits to the registration statement.

(5)(i) Describe any contacts in connection with the roll-up transaction between the sponsor or the general partner and any outside party with respect to the preparation by such party of an opinion concerning the fairness of the roll-up transaction, a valuation of a partnership or its assets, or any other report with respect to the roll-up transaction. No description is required, however, of contacts with respect to reports, opinions or appraisals filed as exhibits pursuant to paragraph (a)(4) of this Item (§ 229.911).

(ii) The description of contacts with any outside party required by paragraph (a)(5)(i) of this Item (§ 229.911) shall include the following:

- (A) The identity of each such party;
- (B) The nature of the contact;

(C) The actions taken by such party;

(D) Any views, preliminary or final, expressed on the proposed subject matter of the report, opinion or appraisal; and

(E) Any reasons such party did not provide a report, opinion or appraisal.

(b) *Fairness opinions*: (1) If any report, opinion or appraisal relates to the fairness of the roll-up transaction to investors in the partnerships, state whether or not the report, opinion or appraisal addresses the fairness of:

(i) The roll-up transaction as a whole and to investors in each partnership; and

(ii) All possible combinations of partnerships in the roll-up transaction (including portions of partnerships if the transaction is structured to permit portions of partnerships to participate). If all possible combinations are not addressed:

(A) Identify the combinations that are addressed;

(B) Identify the person(s) that determined which combinations would be addressed and state the reasons for the selection of the combinations; and

(C) State that if the roll-up transaction is completed with a combination of partnerships not addressed, no report, opinion or appraisal concerning the fairness of the roll-up transaction will have been obtained.

(2) If the sponsor or the general partner has not obtained any opinion on the fairness of the proposed roll-up transaction to investors in each of the affected partnerships, state the sponsor's or general partner's reasons for concluding that such an opinion is not necessary in order to permit the limited partners or shareholders to make an informed decision on the proposed transaction.

(c) *Appraisals*. If the report, opinion or appraisal consists of an appraisal of the assets of the partnerships:

(1) Describe the purpose(s) for which the appraisals were obtained and their use in connection with the roll-up transaction;

(2) Describe which assets are covered by the appraisals and state the aggregate appraised value of the assets covered by the appraisals (including such value net of associated indebtedness). Provide a description of, and valuation

of, any assets subject to any material qualifications by the appraiser and a summary of such qualifications;

(3) Identify the date as of which the appraisals were prepared. State whether and in what circumstances the appraisals will be updated. State whether any events have occurred or conditions have changed since the date of the appraisals that may have caused a material change in the value of the assets;

(4) Include as an appendix to the prospectus one or more tables setting forth the following information:

(i) The appraised value of any separately appraised asset that is significant to the partnership holding such asset;

(ii) If the appraiser considered different valuation approaches in preparing the appraisals of the assets identified in response to paragraph (c)(4)(i) of this Item (§ 229.911(c)(4)(i)), the value of each such asset under each valuation approach considered by the appraiser, identifying the valuation approach used by the appraiser in determining the appraised value and the reason such approach was chosen; and

(iii) All material assumptions used by the appraiser in appraising the assets identified in response to paragraph (c)(4)(i) of this Item (§ 229.911(c)(4)(i)), and, if the appraiser used different assumptions for any of such assets, the reasons the different assumptions were chosen.

(5) For purposes of this Item and Item 902 of this subpart (§ 229.902), an asset is "significant" to a partnership if it represents more than 10% of the value of the partnership's assets as of the end of the most recently-completed fiscal year or recently-completed interim period or if 10% or more of the partnership's cash flow or net income for the most recently-completed fiscal year or most recently-completed subsequent interim period was derived from such asset.

Instructions to Item 911: (1) The reports, opinions and appraisals required to be identified in response to paragraph (a) of this Item (§ 229.911) include any reports, opinions and appraisals which materially relate to the roll-up transaction whether or not relied upon, such as reports or opinions regarding alternatives to the roll-up transaction whether or not the alternatives were rejected.

(2) The information called for by paragraph (a)(2) of this Item (§ 229.911) should be given with respect to the firm which provides the report, opinion or appraisal rather than the employees of such firm who prepared it.

(3) With respect to appraisals, a summary prepared by the appraisers should not be included in lieu of the description of the appraisals required by paragraph (c) of this Item (§ 229.911). A clear and concise summary description of the appraisals is required.

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§ 229.912 (Item 912) Source and amount of funds and transactional expenses.

(a) State the source and total amount of funds or other consideration to be used in the roll-up transaction.

(b)(1) Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the roll-up transaction including, but not limited to, filing fees, legal, financial advisory, accounting and appraisal fees, solicitation expenses and printing costs. Identify the persons responsible for paying any or all of such expenses.

(2) State whether or not any partnership subject to the roll-up transaction will be, directly or indirectly, responsible for any or all of the expenses of the transaction. If any partnership will be so responsible, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(c) If all or any part of the consideration to be used by the sponsor or successor in the roll-up transaction is expected to be, directly or indirectly, provided by any partnership, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(d) If all or any part of the funds or other consideration is, or is expected to be, directly or indirectly borrowed by the sponsor or successor for the purpose of the roll-up transaction:

(1) Provide a summary of each such loan agreement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions; and

(2) Briefly describe any plans or arrangements to finance or repay such